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(A-21)

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

CRAIG SMALLWOOD	) CIVIL NO. 04-2315-12 (SSM)
Plaintiff,	) ORDER (1) GRANTING IN PART AND DENYING IN PART DEFENDANT CITY COUNTY OF HONOLULU'S MOTION TO ENFORCE ORDER GRANTING IN PART AND DENYING IN
HASEKO (EWA), INC., and CITY AND COUNTY OF HONOLULU,	) DEFENDANT CITY AND COUNTY OF HONOLULU'S MOTION TO DISMISS PLAINTIFF CRAIG
Defendant.	) SMALLWOOD'S AMENDED COMPLAINT FILED JULY 30, 2008 AND/OR IN THE ALTERNATIVE (APPENDIX E)

) MOTION FOR A MORE
) DEFINITE
) STATEMENT (FILED
) AUGUST 19, 2008),
) (2)DENYING WITHOUT
) PREJUDICE
) PLAINTIFF CRAIG
) SMALLWOOD'S
) MOTION FOR
) PRELIMINARY
) INJUNCTION FOR
) SUSPENSION AND
) REVOCATION OF
) PERMITS BECAUSE
) OF THE ISSUES OF
) INVALID BY STATUTE
) THE U.S. ARMY CORP
) OF ENGINEERS FEIS
) FOR THE MARINA AT
) OCEAN POINTE AND
) OTHER NON-JURY
) TRIABLE ISSUES
) (FILED OCTOBER 8,
) 2008) AND
) (3) GRANTING
) PLAINTIFF CRAIG
) SMALLWOOD'S ORAL
) MOTION TO
) WITHDRAW SECOND
) AMENDED
) COMPLAINT (MADE
) NOVEMBER 5, 2008)
)
) HEARING:

(A-23)

) **Date:** November 5, 2008
) **Time:** 9:00 a.m.
) **Judge:** Honorable
) Sabrina S. McKenna
)

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT CITY AND COUNTY OF HONOLULU'S MOTION TO ENFORCE ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT CITY AND COUNTY OF HONOLULU'S MOTION TO DISMISS PLAINTIFF CRAIG SMALLWOOD'S AMENDED COMPLAINT FILED JULY 30, 2008 AND/OR IN THE ALTERNATIVE MOTION FOR A MORE DEFINITE STATEMENT (FILED AUGUST 19,2008), (2) DENYING WITHOUT PREJUDICE PLAINTIFF CRAIG SMALLWOOD'S MOTION FOR PRELIMINARY INJUNCTION FOR SUSPENSION AND REVOCATION OF PERMITS BECAUSE OF THE ISSUES OF INVALID BY STATUTE THE U.S. ARMY CORP OF ENGINEERS FEIS FOR THE MARINA AT OCEAN POINTE AND OTHER NON-JURY TRIABLE ISSUES (FILED OCTOBER 8 2008) AND (3) GRANTING PLAINTIFF CRAIG SMALLWOOD'S ORAL MOTION TO WITHDRAW SECOND AMENDED COMPLAINT (MADE NOVEMBER 5, 2008)

Defendant City and County of Honolulu's ("City") Motion to Enforce Order Granting in Part and Denying in Part Defendant City and County of

Honolulu's Motion to Dismiss Plaintiff Craig Smallwood's Amended Complaint filed July 30, 2008 and/or in the Alternative, Motion for a More Definite Statement filed on August 19, 2008 ("City Motion to Enforce"), and Defendant Haseko (Ewa), Inc.'s ("Haseko") Substantive Joinder in Defendant City and County of Honolulu's Motion to Enforce Order Granting in Part and Denying in Part Defendant City and County of Honolulu's Motion to Dismiss Plaintiff Craig Smallwood's Amended Complaint filed July 30, 2008 and/or in the Alternative, Motion for a More Definite Statement Filed August 19, 2008, filed on October 13, 2008 ("Haseko Substantive Joinder"), came for hearing before the Honorable Sabrina S. McKenna on November 5, 2008, with the City being represented by Don K. Kitaoka, Deputy Corporation

Counsel; Haseko by Paul H. Sato; and Plaintiff Craig Smallwood ("Smallwood") appearing pro se.

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In addition, Plaintiff Smallwood's Motion for Preliminary Injunction for Suspension and Revocation of Permits Because of the Issues of Invalid by Statute the U.S. Army Corp of Engineers FEIS for the Marina at Ocean Pointe and Other Non-Jury Triable Issues filed on October 8, 2008 ("Smallwood Motion for Preliminary Injunction") came for hearing before the Honorable Sabrina S. McKenna on October 31, 2008, with further argument heard on November 5, 2008, with the City being represented by Don S. Kitaoka, Deputy Corporation Counsel; Haseko by Sandra Wilhide and Paul H. Sato; and Smallwood appearing pro se.

Finally, Plaintiff Smallwood made an oral motion to withdraw his Second Amended Complaint ("Smallwood Motion to Withdraw Complaint") at the said November 5, 2008 hearing, with the City being represented by Don S. Kitaoka, Deputy Corporation Counsel, Haseko by Paul H. Sato; and Smallwood appearing pro se.

The Court, after considering the (1) various memoranda, declarations and exhibits filed in this proceeding, (2) arguments of counsel and the parties and (3) the entire record of this proceeding, hereby enters the following order regarding (1) the City Motion to Enforce and the Haseko Substantive Joinder, (2) the Smallwood Motion for Preliminary Injunction and (3) the Smallwood Motion to Withdraw Complaint:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. City Motion to Enforce and Haseko Substantive Joinder. The City Motion to Enforce and Haseko Substantive Joinder are hereby granted to the extent that Smallwood shall identify by date each environmental impact statements, environmental assessments, findings of no significant impact, determinations that no environmental assessment was required and two specific building or grading permits challenged by Smallwood. In all other respects, the City Motion to Enforce and the Haseko Substantive Joinder are denied.

2. Smallwood Motion for Preliminary Injunction. Since the Court cannot ascertain from

the Smallwood Motion for Preliminary Injunction what environmental impact statement or other environmental disclosure finding is being challenged by Smallwood, the Smallwood Motion for Preliminary Injunction is denied without prejudice.

3. Smallwood Motion to Withdraw Complaint. Plaintiff Smallwood orally made the Smallwood Motion to Withdraw Complaint based upon Smallwood's representation that he would be filing the same claims in federal court. Upon Smallwood's acceptance of Court's allowance of a withdrawal of the Second Amended Complaint upon the condition that he not refile in any State Court, the Court, pursuant to Rule 41(a)(2), Hawai'i Rules of Civil Procedure, ORDERS, ADJUDGES AND DECREES that the Second Amended Complaint be and hereby is deemed to be withdrawn as to all defendants (the

City and Haseko) without prejudice to Smallwood refilling in federal court only. There are no remaining claims or parties in this action, and therefore this action is hereby dismissed in its entirety.

DATED: Honolulu, Hawaii JAN 21 2009

"s/"

JUDGE OF THE ABOVE-ENTITLED COURT

APPROVED AS TO FORM:

CRAIG SMALLWOOD
Plaintiff Pro Se

"s/"
SANDRA L. WILHIDE
Morihara Lau & Fong, LLP
Attorneys for Defendant
HASEKO (EWA), INC.

CIVIL NO. 04-1-2315-12 (SSM), CRAIG SMALLWOOD V. HASEKO(EWA), INC. AND CITY AND COUNTY OF HONOLULU – ORDER (1) GRANTING IN PART AND DENYING IN PART DEFENDANT CITY AND COUNTY OF HONOLULU'S MOTION TO ENFORCE ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT CITY AND COUNTY OF HONOLULU'S MOTION TO DISMISS PLAINTIFF CRAIG SMALLWOOD'S AMENDED COMPLAINT

FILED JULY 30, 2008 AND/OR IN THE ALTERNATIVE, MOTION FOR A MORE DEFINITE STATEMENT (FILED AUGUST 19, 2008), (2) DENYING WITHOUT PREJUDICE PLAINTIFF CRAIG SMALLWOOD'S MOTION FOR PRELIMINARY INJUNCTION FOR SUSPENSION AND REVOCATION OF PERMITS BECAUSE OF THE ISSUES OF INVALID BY STATUTES THE U.S. ARMY CORP OF ENGINEERS FEIS FOR THE MARINA AT OCEAN POINTE AND OTHER NON-JURY TRIABLE ISSUES (FILED OCTOBER 8, 2008) AND (3) GRANTING PLAINTIFF CRAIG SMALLWOOD'S ORAL MOTION TO WITHDRAW SECOND AMENDED COMPLAINT (MADE NOVEMBER 5, 2008)

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